

8 DEC 1980

MEMORANDUM FOR: Director of Security

FROM:

Policy and Plans Group

SUBJECT: Revising Restrictions on Intelligence Activities

1. The proposed modifications of Executive Order 12036 have been reviewed against the provisions of the Order, time not permitting detailed study of related documents. The thrust of change involves three areas:

a. Reporting of possible violations of Federal criminal law by nonemployees. This provision has given the Office of General Counsel and the Agency continued grief in interpretation and application.

b. Minimizing the policy role of the Attorney General by limiting his authority to review of procedures established by the Intelligence Community to consistency with law. We now need his "approval."

c. Relaxing almost all of the restrictions on intelligence activities and collection techniques (except the untouchables; e.g., assassination) by not limiting the governing criterion to probable cause to believe a U. S. person is an agent of a foreign power. The criterion would be expanded to include all lawful investigations concerned with counterintelligence, counterterrorist, or narcotics matters.

2. The modifications would permit relaxation of the standards for physical and electronic surveillance, mail covers, physical searches, joining domestic organizations, dealing with academic institutions, dissemination of information, and assistance to state or local police organizations. In important investigative areas, we would work "in coordination" with the FBI and not have to refer counterintelligence cases to the FBI for their exclusive action. This is not complete license; we would operate within the law and particularly

that precluding domestic law enforcement. In an overall evaluation of impact on security equities, the modifications cannot be faulted. They represent relief from constraint that has not served the security posture of the Agency or the Community.

3. From the Office of Security standpoint, there do not appear to be other points in the Executive Order of direct interest. However, from a less parochial standpoint, the following could be included in discussion:

a. An effort might be made to include other elements of the Community in the exercise. The Department of Defense, as an example, must also conduct counterintelligence activities under procedures approved by the Attorney General (1-1104).

b. Address the matter of overclassification (1-711). While another Executive Order governs classification, it appears there is an opportunity to present the serious problem created by strict application of classification standards to information that concerns intelligence sources and methods.

c. Consideration of the definition of a resident alien. Recent court decisions on welfare and civil rights suggest the category has been extended to include aliens who enter illegally and surreptitiously.

4. Following the meeting of 9 December, it is recommended the proposed modifications to Executive Order 12036 be returned to the Policy and Plans Group for Office of Security staffing. The modifications are a "first cut" and should be studied in depth by the components concerned, in company and other related directives.

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Attachment